

State of California  
Regional Water Quality Control Board  
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT  
June 10, 2004

ITEM: 11-A

SUBJECT: Administrative Assessment for Civil Liability against BIRTCHEr COMMERCIAL DEV/ PALM TERRACE (discharger) for Non-Payment of fiscal year 2003 construction storm water annual fees in violation of California Water Code section 13260. The Regional Board will decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2004-0196) (*Vicente Rodriguez*)

PURPOSE: The Regional Board will decide whether to adopt an order that accepts the dischargers' waiver to a right to a hearing and settlement of civil liability.

PUBLIC NOTICE: A public notice was posted on the Regional Board web page on May 5, 2004 and published in the Orange County Register and the San Diego Union-Tribune on May 7, 2004 and in the Riverside Press Enterprise on May 8, 2004. The written comment period ended on June 2, 2004, and the oral comment period ends at the June 10, 2004 Regional Board hearing.

DISCUSSION: On April 23, 2004, the Executive Officer issued Complaint Order No. R9-2004-0118 for Administrative Assessment for Civil Liability against the discharger for failure to pay the fiscal year 2003 construction storm water annual fee in violation of California Water Code section 13260. The discharger failed to: 1) respond to the original invoice issued by the State Water Resources Control Board (State Board) in November 2003, 2) the Demand Letter issued in January 2004, and 3) the Notice of Violation issued in February 2004.

The Discharger listed below submitted a signed waiver of right to a hearing and provided the following

- Agreed not to argue against the allegations;
- Submit full payment of the liability; and
- Pay the amount of the annual fee or demonstrate it was not applicable.

Agency and Facility Name: BIRTCHER COMMERCIAL DEV/  
PALM TERRACE

Site Location: 25521 25531 AND 25541 COMMERC  
LAKE FOREST, CA

WDID No: S9 30C311900

No comments concerning this matter were received during the public comment period.

If the Regional Board does not accept the waiver, then the Regional Board will decide to move the item to the non-consent portion of the agenda and conduct a hearing; or the Regional Board will decide to reschedule the hearing for a future Regional Board meeting.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Tentative Order No. R9-2004-0196 (**To be provided with the supplemental mailing**)
2. Signed Waiver
3. Complaint Order No. R9-2004-0118

RECOMMENDATION: Adopt Tentative ACL Order No. R9-2004-0196.

## Item 11-A-1

Tentative Order No. R9-2004-0196  
will be provided with the supplemental mailing.

ITEM 11-A-2

05/20/04 17:04 FAX 309 766 7423

REAL ESTATE INV.

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Terry Tamminen  
Secretary for  
Environmental  
Protection

## California Regional Water Quality Control Board San Diego Region

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340  
(858) 467-2952 • Fax (858) 571-6972  
<http://www.swrcb.ca.gov/rwqcb9>



Arnold Schwarzenegger  
Governor

### WAIVER OF RIGHT TO A HEARING

ca.gov/storm  
wtr.

Earle Johnson  
Pac Jack LLC  
One State Farm Plaza E 10  
Bloomington, IL 61710

Administrative Civil Liability  
Complaint No. R9-2004-0118

\$1,310

April 23, 2004

BIRTCHER COMMERCIAL DEV

WDID No. S9 30C311900

By signing below, I agree to waive **Pac Jack LLC (Palm Terrace)**'s right to a hearing before the California Regional Water Quality Control Board, San Diego Region with regards to the violations alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I understand that I am authorized to give up **Pac Jack LLC (Palm Terrace)**'s right to be heard; and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the civil liability imposed.

Signature

John R. Higgins  
Print Name

V.P.  
Title

5/19/04  
Date

**Send this signed form to:**

John H. Robertus, Executive Officer  
C/O Compliance Assurance Unit  
California Regional Water Quality Control Board - San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

|                           |   |                                |
|---------------------------|---|--------------------------------|
| In the Matter of          | ) | Complaint No. R9-2004-0118     |
|                           | ) | For                            |
| Earle Johnson             | ) | Administrative Civil Liability |
| Pac Jack LLC              | ) |                                |
| One State Farm Plaza E 10 | ) | \$1,310                        |
| Bloomington, IL 61710     | ) |                                |
| <hr/>                     |   | Failure to Pay Annual Fees     |

**Palm Terrace IS HEREBY GIVEN NOTICE THAT:**

1. Pac Jack LLC (discharger) owns/operates Palm Terrace located at 25521 25531 And 25541 Commere in Lake Forest. Palm Terrace is regulated by State Water Resources Control Board Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities excluding Construction Activities (General Permit). The waste discharger identification number for the facility is S9 30C311900.

**ALLEGATION**

2. The Discharger is alleged to have violated Section 13260(d) of the California Water Code which requires that each person for whom waste discharge requirements have been prescribed pursuant to Water Code Section 13263 shall pay an annual fee according to a fee schedule established by the State Water Resources Control Board (State Board).
3. The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), may impose liability in accordance with California Water Code Section 13261 (a) and (b) for failure to pay annual fee assessed for the facility.
4. The following facts are the basis for the alleged violations in this matter:

Annual Fee Notice: On November 14, 2003, the State Board issued a notice of Annual Fee (Invoice No. 12495) to the discharger providing 30 days (December 14, 2003) for payment of the fiscal year 2003 - 04, beginning on July 1, 2003. The annual fee applicable to this facility is \$450.

Demand Letter: On January 22, 2004, the State Board issued a Past Due notice establishing the annual fee was more than 30 days past due.

Notice Of Violation: On February 26, 2004, the State Board issued a Notice of Violation, establishing the Annual fee was more than 90 days past due. The NOV is the final notice to the discharger that failure to pay required annual fees is a violation of the California Water Code Section 13261 and could subject the discharger to Administrative Civil Liability Complaint assessing monetary penalties.

April 23, 2004

5. While the annual fee has remained outstanding, the discharger continued to enjoy the privilege of discharging waste, while other dischargers paid the required annual fee. The liability should be calculated to negate any economic benefit realized by the discharger because of the violation.
6. As of April 23, 2004, the number of days Palm Terrace has been in violation for non-payment has been 131 days, tabulated as:

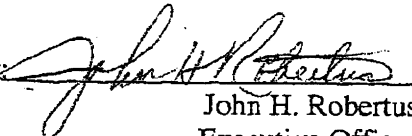
**December 14, 2003 to April 23, 2004 = 131 days of violations**

7. Pursuant to Water Code Section 13261(b), the maximum assessment Palm Terrace is civilly liable is \$1,000 for each day of violation for the violation cited above. The amount of liability will continue to accrue with the continued failure to pay the annual fee after the issuance of this complaint until the Regional Board considers this matter in a public hearing. Therefore, the maximum civil liability can range up to \$13,100.

**PROPOSED CIVIL LIABILITY**

8. Civil liability should be imposed on Pac Jack LLC by the Regional Board in the amount of \$1,310, calculated at \$10 per day times the number of days late or non/payment for the violations cited above. The proposed amount of civil liability attributed to each violation was determined by taking into consideration the factors specified in Section 13367, as well as the maximum civil liability that the Regional Board may assess.
9. Assessment of liability is a separate amount and does not include the amount of the annual storm water fee. Failure to pay the annual fee after the issuance of this complaint continues to accrue days of violation and is subject to additional assessment of liability until the Regional Board considers this matter in a public hearing. The current outstanding balance is \$450.
10. The Regional Board costs for investigating this incident were approximately \$400.

Dated April 23, 2004

By:   
John H. Robertus  
Executive Officer